

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EUGENE SMITH,

Plaintiff,

-against-

9:15-CV-0137 (LEK/TWD)

P. PALMER, *et al.*,

Defendants.

ORDER

I. INTRODUCTION

This matter comes before the Court following an Order and Report-Recommendation filed on November 3, 2016, by the Honorable Thérèse Wiley Dancks, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 41 (“Report-Recommendation”). Pro se Plaintiff Eugene Smith timely filed Objections. Dkt. No. 48 (“Objections”).

II. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. *Barnes v. Prack*, No. 11-CV-0857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); *Farid v. Bouey*, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008); see also *Machicote v. Ercole*, No. 06-CV-13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and

clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Otherwise, a court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” Id.

III. DISCUSSION

Smith’s Objections do not address the basis for Judge Dancks’s decision, see Objs., which is that his suit is barred because he failed to exhaust his administrative remedies, Rep.-Rec. at 15–17. Accordingly, the Court has reviewed the Report-Recommendation for clear error and has found none.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 41) is **APPROVED and ADOPTED in its entirety**; and it is further

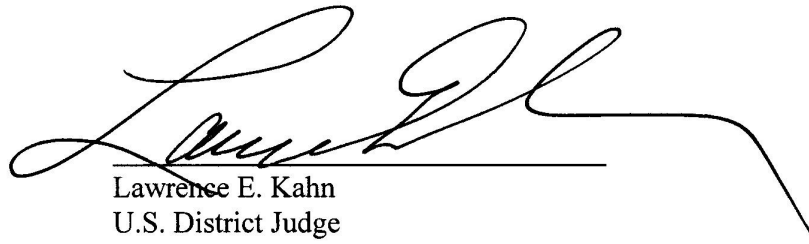
ORDERED, that Defendants’ Motion for Summary Judgment (Dkt. No. 32) is **GRANTED** on the ground that Smith failed to exhaust his administrative remedies before commencing this action, and **DENIED** as to the merits of Smith’s Eighth Amendment claim; and it is further

ORDERED, that Smith’s Cross-Motion for Summary Judgment (Dkt. No. 37) is **DENIED**; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: January 27, 2017
Albany, New York



Lawrence E. Kahn
U.S. District Judge